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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 MAXILL INC., an Ohio corporation,

9 Plaintiff,

10 v.

11 LOOPS, LLC; and LOOPS
12 FLEXBRUSH, LLC,

13 Defendants.

14 LOOPS, L.L.C.; and LOOPS
15 FLEXBRUSH, L.L.C.,

16 Plaintiffs,

17 v.

18 MAXILL INC., a Canadian corporation;
19 and DOES 1-10,

20 Defendants.

C17-1825 TSZ
(consolidated with C18-1026 TSZ)

MINUTE ORDER

21 The following Minute Order is made by direction of the Court, the Honorable
22 Thomas S. Zilly, United States District Judge:

23 (1) Loops, L.L.C. and Loops Flexbrush, L.L.C. (collectively, “Loops”) are
DIRECTED to show cause by May 31, 2019, why defendants Does 1-10 should not be
dismissed for failure to identify and join such entities on or before October 22, 2018, the
deadline set forth in the Minute Order entered August 30, 2018, docket no. 23.

1 (2) With regard to the parties' first submission under Local Civil Rule 37,
2 docket nos. 32 and 34, the Court ORDERS as follows:

3 (a) Loops Interrogatory No. 3: Maxill Inc., an Ohio corporation, and
4 Maxill Inc., a Canadian corporation, (collectively, "Maxill") are DIRECTED to
5 identify the entities that have purchased the Accused Products within the United
6 States since May 28, 2013; Maxill's response shall be subject to the restrictions set
7 forth in the Stipulated Protective Order, docket no. 25, for material designated as
8 "Confidential - Attorneys Eyes Only."

9 (b) Loops Interrogatory No. 9: Loops has not indicated how Maxill's
10 response to this interrogatory is incomplete, and Loops's request to compel further
11 disclosure from Maxill in response to this interrogatory is DENIED.

12 (c) Loops Interrogatory No. 10: This interrogatory seeks essentially the
13 same information as Interrogatory No. 3, and the Court's ruling concerning
14 Interrogatory No. 3 renders moot the parties' dispute regarding Interrogatory
15 No. 10.

16 (d) Loops Request for Production No. 16(h-j): Maxill is DIRECTED to
17 produce profit and loss or similar statements reflecting gross profits on the
18 Accused Products since May 28, 2013, as well as costs, taxes, and/or overhead
19 expenses used to compute net profits; Maxill is DIRECTED to also produce any
20 promotional materials and/or advertisements that were distributed or displayed
21 within the United States relating to the Accused Products; Loops's request to
22 compel from Maxill "all documents mentioning" the Accused Products, including
23 specifications, manuals, invoices, purchase orders, bills of lading, and customs
manifests, is DENIED because it seeks discovery that is not proportional to the
needs of the case, *see* Fed. R. Civ. P. 26(b)(1); Maxill's financial information shall
be subject to the restrictions set forth in the Stipulated Protective Order, docket
no. 25, for material designated as "Confidential - Attorneys Eyes Only," but any
promotional or advertising materials previously distributed to third parties shall
not be treated as "Confidential" or "Confidential - Attorneys Eyes Only."

(e) Maxill shall comply with the discovery obligations set forth in
Paragraphs 2(a)-(d), above, on or before May 24, 2019.

19 (3) With regard to the parties' second submission under Local Civil Rule 37,
20 docket nos. 35 and 37, the Court ORDERS as follows:

21 (a) Request for Production No. 10: Loops is DIRECTED to produce, on
22 or before May 24, 2019, any documents responsive to this request and a statement
23 indicating that a diligent search was performed.

1 (b) Request for Production No. 7: Loops is DIRECTED to produce, on
2 or before June 14, 2019, profit and loss or similar statements (*e.g.*, unredacted
3 portions of its ledgers) reflecting gross profits, if any, on sales to entities identified
4 by Maxill in response to Loops's Interrogatory No. 3; Loops's disclosures shall be
5 subject to the restrictions set forth in the Stipulated Protective Order, docket
6 no. 25, for material designated as "Confidential - Attorneys Eyes Only."

7 (c) Request for Production No. 57: Maxill's request to compel Loops to
8 produce "all records, including any purchase orders, sales and payment receipts"
9 corresponding to "each sales figure" in Loops's previously disclosed ledgers is
10 DENIED because it seeks discovery that is not proportional to the needs of the
11 case, *see* Fed. R. Civ. P. 26(b)(1).

12 (d) Request for Production No. 58: Maxill's request to compel Loops to
13 produce "detail records and documents" supporting the foreign ledger, dual ledger,
14 and California ledger previously disclosed is DENIED because it seeks discovery
15 that is not proportional to the needs of the case, *see* Fed. R. Civ. P. 26(b)(1).

16 (e) Request for Production No. 59: Maxill's request to compel Loops to
17 produce "all documents and things" that support Steven Kayser's testimony about
18 Loops's decrease in sales resulting from "counterfeiting" over the last ten years is
19 DENIED; this action concerns Loops's allegations that Maxill is and/or was
20 infringing United States Patent No. 8,448,285, which issued on May 28, 2013, and
21 whether Loops suffered losses as a result of "counterfeiting" of products not
22 embodying the patent, or in which entities other than Maxill engaged, is not
23 relevant.

14 (f) Interrogatory No. 9: Maxill's request to compel Loops to identify
15 new customers "gained in 2016" is DENIED; Maxill appears to seek such
16 information to prove that Loops "habitually pursues litigation against its
17 competitors . . . for the sole purpose of monopolizing the market," 2d LCR 37
18 Mot. at 19 (docket no. 37), but a patent holder like Loops "may bring suit [to
19 enforce its patent rights against infringement] without fear that [its] doing so will
20 be regarded as an unlawful attempt to suppress competition," *see Dawson Chem.*
21 *Co. v. Rohn & Haas Co.*, 448 U.S. 176, 201 (1980); *see also* 35 U.S.C. § 271(d);
22 moreover, to the extent that Interrogatory No. 9 is inquiring about Loops's sales in
23 2016 to entities that have purchased the Accused Products since May 28, 2013, the
Court's ruling concerning Request for Production No. 7 renders moot the parties'
dispute regarding Interrogatory No. 9.

21 (g) Interrogatory No. 16: Loops is DIRECTED to state, on or before
22 May 24, 2019, the amount of damages, if any, being sought in this litigation for
23 lost sales, and how such amount is calculated.

1 (h) Request for Production No. 60: Maxill's request to compel Loops to
2 produce one or more contracts with Bob Barker Company, Inc. ("Bob Barker"), in
3 the absence of Bob Barker's consent, is DENIED without prejudice; Maxill may
renew its motion if efforts to obtain the documents directly from Bob Barker are
unsuccessful.

4 (i) Request for Production No. 47: Maxill's request to compel Loops to
5 produce all "pleadings or other papers" in Loops LLC v. Phoenix Trading, Inc.,
6 W.D. Wash. Case No. C08-1064 RSM, is DENIED; information about this case is
publicly available in Westlaw, see, e.g., Loops LLC v. Phoenix Trading, Inc., 2016
WL 6609560 (W.D. Wash. Nov. 9, 2016), as well as through CM/ECF.

7 (j) Interrogatory No. 3: Maxill's request to compel Loops to identify all
8 lawsuits to which it is or was a party is DENIED because it seeks discovery that is
not proportional to the needs of the case, see Fed. R. Civ. P. 26(b)(1).

9 (k) Interrogatory No. 12: Loops has answered this interrogatory, and
10 Maxill's request to compel Loops to provide information about Dr. Garsh that it
has indicated it does not possess is DENIED.

11 (l) Interrogatory No. 13: Loops is DIRECTED to provide, on or before
12 May 10, 2019, either (i) the full name and any contact information for individuals
who advised Loops about Bob Barker selling the Accused Products to College
Hospital and/or the juvenile correctional facility in California, or (ii) a summary of
13 Loops's efforts to attempt to locate such information.

14 (4) Except as granted in Paragraphs 2 and 3, above, the LCR 37 submissions
are DENIED. The Court DECLINES to award attorneys' fees or costs in connection with
15 either of the parties' LCR 37 submissions.

16 (5) In light of the Court's rulings, the expert disclosure deadline is sua sponte
EXTENDED from May 24, 2019, to June 28, 2019, and the rebuttal expert disclosure
17 deadline is EXTENDED from June 24, 2019, to July 26, 2019. The fact discovery
deadline remains August 1, 2019, but experts may be deposed until August 30, 2019.
18 A new deadline is hereby imposed for motions related to expert witnesses (e.g., motions
pursuant to Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993), and its progeny);
19 such motions shall be filed by October 10, 2019, and noted on the motions calendar no
later than the third Friday thereafter (see LCR 7(d)(3)). The Agreed Pretrial Order, which
20 is due on January 10, 2020, shall be filed in the Case Management and Electronic Case
Filing (CM/ECF) system, and shall also be attached as a Word compatible file to an
21 e-mail sent to the following address: ZillyOrders@wawd.uscourts.gov. Notwithstanding
Local Civil Rule 16.1, the exhibit list shall be prepared in table format with the following
22 columns: "Exhibit Number," "Description," "Admissibility Stipulated," "Authenticity
Stipulated/Admissibility Disputed," "Authenticity Disputed," and "Admitted." The latter
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1 column is for the Clerk's convenience and shall remain blank, but the parties shall
2 indicate the status of an exhibit's authenticity and admissibility by placing an "X" in the
3 appropriate column. Duplicate documents shall not be listed twice; once a party has
4 identified an exhibit in the pretrial order, any party may use it. All other terms and
5 conditions, and all dates and deadlines not inconsistent herewith, set forth in the Minute
6 Order entered August 30, 2018, docket no. 23, shall remain in full force and effect.

7 (6) The Clerk is directed to send a copy of this Minute Order to all counsel of
8 record.

9 Dated this 3rd day of May, 2019.

10 William M. McCool
11 Clerk

12 s/Karen Dews
13 Deputy Clerk